



**“Briefing on Police Practices and Use of Force”  
The United States Commission on Civil Rights**

Public Comment from:  
**The National Association for Civilian Oversight of Law Enforcement**

Submitted:  
**Submitted via e-mail to [publiccomments@usccr.gov](mailto:publiccomments@usccr.gov) on June 19, 2015**

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Dear Chair Castro, Vice Chair Timmons-Goodson, Distinguished Commissioners, and staff:

As President and on behalf of the National Association for Civilian Oversight of Law Enforcement (NACOLE), its Board of Directors, staff, and members, I respectfully submit the following statement and recommendations to the U.S. Commission on Civil Rights for the *Briefing on Police Practices and Use of Force*, held April 20, 2015 in New York City.

Established in 1995, NACOLE is a non-profit organization that works to enhance accountability and transparency in policing and build community trust through civilian oversight. To further our mission, we hold annual and regional conferences that bring together the growing community of civilian oversight practitioners, law enforcement officials, journalists, elected officials, students, community members, and others to meet and exchange information and ideas about issues facing civilian oversight and law enforcement. In addition to these conferences, NACOLE offers year-round training, support, and professional growth and development opportunities for oversight practitioners across the nation, as well as in other countries. More information about NACOLE can be found on our website, [www.nacole.org](http://www.nacole.org).

Our experience over the last 20 years has shown us that strong, independent oversight builds legitimacy and trust through increased transparency and accountability to the public. There is growing recognition of oversight’s important role in today’s professional policing. The President’s Task Force on 21st Century Policing, in its final report to President Obama, recommended establishing civilian oversight to strengthen trust with the community. Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public’s trust.

Oversight is a process, and like policing, it is complex. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, police auditors, and inspectors general, among other models. Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and responsive to the community.

**P.O. Box 87227 ♦ Tucson, Arizona 85754 ♦ (317) 721-8133**  
**E-mail: [info@nacole.org](mailto:info@nacole.org) ♦ Website: [www.nacole.org](http://www.nacole.org)**

By fostering accountability through independent investigations or auditing of police misconduct complaints, oversight can also identify needed changes in police practices and training, and provide a meaningful voice or forum for the public. Effective oversight leads to more effective policing. An investment in oversight is an investment in the police.

## **I. Current state of policing in the United States**

The current crisis of mistrust and breaking or broken relationships between police and the communities they are sworn to serve and protect is one of the most pressing challenges facing the nation. In communities of color particularly, policing practices that are perceived to be overly harsh, unjust, or unfair, regardless of whether those practices are deemed lawful, can undermine police legitimacy. As we witnessed in Ferguson, Missouri, a single officer-involved shooting has the potential to shake the public's confidence in the police, not only in the community where the incident occurred, but also throughout communities across the country. When the members of one racial group are significantly more likely to be stopped, searched, arrested, or even shot by the police, maintaining trust becomes immensely more difficult. A lack of transparency only serves to increase the divide.

Time and again, cities everywhere have found themselves scrambling to establish civilian oversight in the wake of a scandal and complaints of law enforcement misconduct (irrespective of whether or not allegations are substantiated). People are demanding changes, but what does it mean when the cry for civilian oversight is issued? Increased transparency, trust, and communication between the police and the public, facilitated through effective oversight, can lead to greater cooperation between the police and the public in achieving the ultimate goal of decreased crime and increased public safety.

Importantly, civilian oversight provides a mechanism to bring together the many stakeholders involved in supporting trusted, respectful, and effective law enforcement efforts. Oversight breaks down the walls between police and the public. By reminding police that they ultimately serve the public's interests, and by educating the community on the unique and difficult challenges officers encounter every day, oversight also enhances their understanding of each other. While many take polarizing, divisive positions regarding the role of law enforcement, civilian oversight practitioners strive to work collaboratively with all interests involved to ensure careful, unbiased evaluation of facts and policies in order to achieve solutions that address both the needs of police to protect public safety and the needs of the public to trust their police.

## **II. Background of civilian oversight of law enforcement and NACOLE**

In its simplest meaning, civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department who take up the task of holding that department and its members accountable for their actions. Contrasted with internal accountability mechanisms commonly found in law enforcement (i.e., internal affairs), independent police review offers a method of civilian involvement in accountability that is often, but not always, external to the department. Its independence from the agency or the sworn chain of command allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.

Civilian oversight may be established in response to recurring problems in a particular law enforcement agency, such as a pattern or practice of the use of excessive force or repeated complaints of racial profiling. Sometimes oversight is initiated proactively by a local municipality to identify and correct such issues before they become more widespread and difficult to rectify. Often, however, oversight is generated in response to a single, particularly high-profile allegation or incidence of police misconduct. Whatever the circumstances, police oversight is now found in cities and counties both large and small, and in every geographic region of the nation, as well as in other countries.

While practices vary according to the roles of the oversight entity or the laws of its jurisdiction, it is common for civilian oversight agencies to be both an independent source and a repository of qualitative and quantitative data. Oversight agencies may issue public reports on the number, type, and outcome of misconduct investigations; lawsuits; uses of force; or detentions and arrests. They may provide on-scene monitoring of critical incidents, such as officer-involved shootings, or of mass social gatherings, including protests and demonstrations; and they may subsequently provide the public with a singularly independent account of the actions taken by the police, evaluating whether those actions were appropriate under the circumstances or showed a need for some measure of reform. In addition to the issuance of public reports, qualified and experienced oversight entities may also assess a police department's policies, training curricula, and recruitment standards, among other procedures, in order to compare them against the prevailing standards in a perpetually dynamic profession. The effectiveness of oversight in any particular community is dependent on a host of factors including political and budgetary support, ready access to information including police files, records, and performance data, the training and expertise of oversight personnel, and acceptance by the local law enforcement agency and community.

In 1995, as citizen oversight experienced significant growth and expansion across the country—one of several growth periods in the last thirty years—the National Association for Civilian Oversight of Law Enforcement (NACOLE) was established as the nation's only professional association of organizations and individuals working directly in oversight. With hundreds of members across the nation and around the world, NACOLE has legitimized police oversight as a professional field of study and practice and facilitated the development of professional standards, including a Code of Ethics, as well as core competencies and training guidelines for oversight practitioners. NACOLE also hosts annual and regional training conferences where civilian overseers and other interested stakeholders meet and exchange information and ideas about issues facing law enforcement oversight.

### **III. Police Use of Force**

The use of force by police is maybe the greatest area of tension and misunderstanding between law enforcement and the public, although the proportion of police-public contacts nationally that result in any force being used or threatened by police is approximately 1.4 percent, according to the U.S. Department of Justice's Bureau of Justice Statistics. These low incidence, high-risk interactions—particularly uses of deadly force by police—can erode public trust, making policing more difficult. Effective management of a police agency's use of force is essential to achieving effective, trusted policing.

In a democratic society, the principle obligations of the police are to protect citizens' fundamental rights and freedoms and to prevent crime and disorder. Sir Robert Peel recognized that police must maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police. Peel's principles form the basis of American law enforcement, and comprise an approach to policing derived almost exclusively from public cooperation, continuously earned and maintained through public approval, trust, and perceptions of legitimacy. Peel's principles also acknowledge the need for police to use force; two of his nine primary principles explicitly recognize the critical role use of force plays in determining the effectiveness of the police.

The proper role for police, thus generally defined, is not static. As society changes, what the public expects from police changes. Broadly, the U.S. Constitution provides a framework of limitations for the police, including on their use of force, and state legislatures may also pass laws dictating police roles and conduct; but ultimately, the police are required to be responsive to their specific community. However, the needs and views of that community may change over time. Through active dialogues with the public and law enforcement, civilian oversight brings stakeholders together and provides valuable feedback to law enforcement about how their policies and practices are perceived by their specific community, avoiding divisive discourse and toxic rhetoric. Through review of police practices and training, outside auditors and practitioners can help law enforcement identify areas where their perception of their role has become outdated. Oversight also communicates back to the public about how their police force is performing and whether the department's policies and programs maximize the public's interests and reflect local values.

The level and frequency with which officers use force is not simply a result of the rate at which they face violence in carrying out their law enforcement duties. Training, tactics, equipment, and policies all contribute to the level and frequency with which force is used. Further, robust investigations, review, and remediation are three additional critical components of an effective use of force management system. Officers need clear and specific training, guidelines, and policies. General training or policies, which are vague and adjustable or fluid, create confusion for officers in patrol cars or out walking the beats making it difficult for them to understand when and what level of force is reasonable.

In addition to clear and specific rules on using force, police agencies must also develop and implement comprehensive training that specifically addresses the current challenges police officers face on a daily basis in this country. This includes training on interactions with marginalized or historically disenfranchised communities, such as persons with mental illness, the LGBTQ community, homeless individuals, and persons with disabilities. Current best practice in use of force management comprises a focus on de-escalation training and policies that increase officer safety and mitigate the need to use force. Inevitably police will need to use force to accomplish legitimate law enforcement objectives. The goal, then, is to reduce the overall need to use force, as well as the number of violent encounters between police and the public.

#### **IV. Building a culture of transparency**

Civilian oversight, in even its most basic forms, inherently enhances transparency – it allows individuals from outside a law enforcement agency’s sworn chain of command access to the inner workings of that agency, albeit to different degrees. A primary focus of civilian oversight is using this expanded transparency to increase accountability and also to advance community understanding of the work of law enforcement. Police departments are often accused of having an insular culture; those departments that have embraced civilian oversight have been able to neutralize this criticism, and ensure appropriate information is made available for public review. Moreover, in those jurisdictions where strict laws prevent public disclosure of significant amounts of information, a properly designed oversight entity can be the eyes and ears for the public, even if unable to release specific, identifiable information itself.

#### **V. Procedural justice**

Central to police legitimacy is the idea of procedural justice: perceptions of fairness in the administration of justice and the fair and impartial exercise of police discretion. And, while officers have an obligation to be impartial and enforce the law fairly, procedural justice also calls upon officers to treat people with dignity and respect, as doing so is equally as important, if not more so. Procedural justice encompasses not only the way an officer interacts with the public, but also requires that members of the public have an effective procedure to raise concerns about police conduct. Unfortunately, individuals who feel they have been wronged by a police officer are often hesitant to approach the department that employs the officer with their concerns. They may feel intimidated, or doubtful that the department will be interested in, or even capable of, taking a truly unbiased look at their concern. Without an alternative procedure to raise concerns about officer behavior, some members of the public are left to conclude that they have no trustworthy, legitimate avenue for such redress and, even more troublingly, view the entire law enforcement “system” as structured in a way for the police to avoid being held accountable.

Outside review of the police provides an opportunity for those who seek to complain against the police to raise their concerns with fellow citizens, who do not fall within the sworn chain of command of the police department. Further, it gives police officers and other employees of a department a safe place to report unfair or unlawful treatment by their peers or supervisors. In those instances, oversight can help repair internal discord within a police force. Acknowledging that oversight agencies’ authorities vary from place to place, it is often these agencies that skeptical complainants – both external and internal – can turn to in order to feel that their concerns will truly be heard and responded to fairly.

Beyond providing procedural justice for specific complaints, oversight can also establish a procedure for review of critical and high profile incidents, such as officer-involved shootings, in-custody deaths, and uses of a TASER, all of which can leave a community clamoring for justice and, potentially, lacking faith in the involved police department’s ability to remain unbiased. Furthermore, as civilian overseers look at individual complaints or critical incidents, they gain unique insights and perspectives that put them in a position to identify systemic issues that are most effectively addressed through a change in department-wide policy or training. Ultimately, this impact on systemic issues can further improve police-public interactions and strengthen the community’s belief that their police are procedurally just.

Finally, as law enforcement agencies work to adopt a culture of procedural justice, civilian oversight can help communicate to the public the steps being taken and why they are worthy of trust and will serve legitimacy. Police oversight also can audit such efforts to provide the community with reliable information about police agency progress.

Law enforcement agencies that are proactively and genuinely striving to provide constitutional policing that is responsive to community needs can find that their own attempts to communicate their efforts to the public are futile because the agency has lost credibility with the public. However, when independent overseers who are charged with looking critically at the department communicate the same message about the department's reform efforts, the public may be more receptive to the message. This is one more illustration of how civilian oversight acts as a bridge connecting, or in some cases reconnecting, law enforcement agencies with the communities they serve.

## **VI. Protection of civil rights**

Finally, police oversight is an important mechanism for ensuring civil rights protections. Civilian oversight has its roots in the Civil Rights Movement. Issues of race and policing are central to the history of oversight, as well as NACOLE. Thus, the oversight community recognizes the important role it plays in identifying, understanding, and addressing discriminatory and unconstitutional police practices. Accordingly, oversight practitioners are at the forefront of investigating, reviewing, and auditing individual cases or patterns of potential civil rights violations, foremost amongst them allegations of racial profiling and biased policing, as well as complaints of illegal searches, excessive force, or unlawful detentions and arrests.

Citizen oversight also helps to ensure police engage in long-term, meaningful outreach to communities such as persons with mental illness, the LGBTQ community, homeless individuals, and persons with disabilities. Additionally, independent review provides a voice and a forum for these communities, both before and after major incidents involving them and the police have occurred. As with other types of complaints, police oversight entities improve the overall quality of internal investigation of allegations of bias and discrimination in police encounters. With the backing of civilian oversight, many law enforcement agencies across the nation support and vigorously protect the rights of minority and marginalized communities in their jurisdictions.

## **VII. Recommendations**

We would like to put forth nine total recommendations to improve public safety, enhance the impact and effectiveness of civilian oversight in building public trust, and reduce the overall need for, and incidence of, police use of force.

Ronald L. Davis, Director of the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office), recently stated in a Washington Post article about police shootings: "We have to get beyond what is legal and start focusing on what is preventable." We could not agree more.

Accordingly, our recommendations are as follows:

1. “Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.” Recommendation 2.8 from the final report of the President’s Task Force on 21st Century Policing.

The President’s Task Force also recommended two related action items. They are as follows:

- a. “The U.S. Department of Justice, through its research arm, the National Institute of Justice (NIJ), should expand its research agenda to include civilian oversight.” Action Item 2.8.1.
  - b. “The U.S. Department of Justice’s Office of Community Oriented Policing Services (COPS Office) should provide technical assistance and collect best practices from existing civilian oversight efforts and be prepared to help cities create this structure, potentially with some matching grants and funding.” Action Item 2.8.2.
2. Ensure that police officers continue to have the proper tools, guidance, training, and supervision to carry out their law enforcement responsibilities safely and in accordance with individuals’ constitutional rights.
3. Make constitutional policing and transparency core values of policing, as well as building systems of accountability that include independent oversight to carry out those values to support the many police officers who uphold their oaths, engendering greater public trust.
4. Ensure that police continue to function as a part of the community; that police continue to work to cultivate legitimacy by engaging with the community fairly, impartially, and respectfully; and, that the police become more directly responsive to the community.
5. Improve the quality and integrity of police disciplinary systems, including investigations of misconduct complaints and uses of force, while vigilantly safeguarding the rights of officers.
6. Ensure that independent oversight is a part of efforts to identify and resolve underlying systemic problems within law enforcement, with a primary focus on reducing and preventing misconduct and enhancing accountability, as well as promoting effective policing and developing strategies for positive organizational change.
7. Demand that police agencies develop clear and specific training, guidelines, and policies that explicitly state when and what level of force may be used in the field.
8. Ensure police agencies develop and implement comprehensive training that specifically addresses the current challenges police officers face on a daily basis in this country. This includes training on interactions with marginalized or historically disenfranchised communities, such as persons with mental illness, the LGBTQ community, homeless individuals, and persons with disabilities.

9. Call for police use of force management systems to include a heavy emphasis on de-escalation training and policies that increase officer safety, mitigate the overall need to use force, and reduce the number of violent encounters between police and the public.

Thank you for the opportunity to submit public comment to the U.S. Commission on Civil Rights during this important process. We are committed to supporting your work, and NACOLE, with its vast network of oversight practitioners, experts, and community stakeholders, is ready to work together to strengthen the critical relationship between the police and the communities they serve.

Should you have questions or would like to consult with NACOLE on this matter you can contact me directly by phone or email at 317-721-8133 or [buchner@nacole.org](mailto:buchner@nacole.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Q.' followed by a long horizontal stroke.

Brian Buchner  
President  
NACOLE